



THE PERSPECTIVES OF LEGAL PROGRESSIVISM CONCERNING SONG ROYALTY PAYMENTS

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Abstract

The Royalty is actually an economic right that must be accepted by the creator as a form of respect and reward for a work. In this case, the existence of rules regarding the payment of royalties is important in ensuring legal certainty. Even so, the economic right to pay royalties must also take into account social realities. This is especially the case when cafés are subject to royalty payments for music and songs. Of course, the lack of clarity about the meaning of café makes every coffee shop also have to pay royalties. This research is a normative legal research with legal issues of legal ambiguity on the meaning of café. This research is a juridical-normative research. The research uses two approaches, namely the legislation approach and the concept approach. The legal materials in this study are primary legal materials which include: the 1945 Constitution of the Republic of Indonesia, Law no. 28 of 2014 concerning Copyright, and Government Regulation No. 56 of 2021 concerning Management of Song and/or Music Copyright Royalties. Secondary legal materials include: books, journal articles, to research results. Non-legal materials include language dictionaries. The results of the study confirm that the progressive legal aspect of royalty payments must place royalties not only as a right but also as an effort to promote public welfare. The emphasis on the creator's economic rights in paying royalties is actually contrary to the value of justice from a progressive legal perspective. Thus, the President should revise the PP royalty by providing firm, clear, and limitative information.

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Introduction

Law is one of the instruments that regulate humans and their behavior. The law has a definite, regulating, and coercive character (Zaid et al., 2021). Such character requires that valid and legitimate social institutions make laws. In this case, the state is an appropriate social institution in making laws with a binding and regulating character (D. Djohari, 2014). The law made by the state has a special character, usually referred to as positive law (Harun,

2019). Positive law is an implication of legal modernization where the law has a definite character, so it must be written in a certain official text (Prasetio, Disantara, Azzahra, 2021). That is an effort to ensure that the law is certain and can be used as a guide and guide in regulating society. In addition to being oriented towards efforts to regulate society, the law also has the character to maintain order and maintain the existential rights of the community (Rahmatullah, 2021). The existential right of the community is the right of each individual to maintain their survival (Marzuki, 2017b). One concrete example of community existential rights is economic rights. In short, economic rights are understood as every right with economic potential where everyone can take advantage of work or ownership that is his right (Tuwanto, Roisah, 2016).

In its development, economic rights are identified with the "cashability of" an economic right. Even though economic rights are usually associated with "cashable", in essence, economic rights are not always related to money but have economic value that can be used to meet human needs. One example of economic rights is copyright. Copyright is an inherent right to copyrighted or other works made by humans with an economic dimension (Handoko, 2015). The economic dimension here places copyright economically related to the economic aspect, which is related to the "cashable" aspect. Copyright is not only related to the economic aspect but also the moral aspect. That is because, essentially, a copyrighted work is attached to the creator of a copyrighted work. In this case, even though, under certain conditions, the economic rights have been transferred to another party, morally, the moral rights to a work are attached to the work's creator. This is the importance of regulating copyright to maintain the economic and moral rights of the creator of a copyrighted work. One of the regulations related to copyright is the arrangement for payment of royalties for certain forms of public services as regulated in Article 3 of Government Regulation no. 56 of 2021 concerning Management of Song and/or Music Copyright Royalties (hereinafter referred to as PP Royalties).

Article 3 of the PP Royalty affirms the obligation to pay royalties related to the copyright of songs and/or music for forms of public services, which include: seminars/conferences, cinemas, music concerts, airplanes, and cafes. At first glance, the regulation in Article 3 of PP Royalty is good because it is oriented towards protecting the copyright owner of songs and/or music. However, these provisions can be discriminatory and oppress small communities that open a café or coffee shops. That is based on at least two reason. *First*, Article 3 of PP Royalty does not explain cafes, whether cafes are in the lower

middle category, the upper category (in the sense of high income and located in an urban center) or all cafe categories which in this case including a small coffee shop. That is based on the explanation of Article 3 of PP Royalty which only emphasizes "sufficiently clear". *Second*, in the absence of certain criteria for cafes to pay royalties related to the song and/or music copyright, the regulation has the potential to oppress small coffee shop entrepreneurs who also often play songs and/or music. That is what causes the problem that Article 3 PP Royalty only provides protection guarantees for copyright owners but misses the sight of small coffee shop entrepreneurs whose profits are not much and only enough to support their families. This is also emphasized in Law no. 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law) which in the consideration philosophically considers the regulation of copyright oriented to provide efforts to promote public welfare. However, with the provisions as in Article 3 PP Royalty above, can general welfare be achieved?

This research aims to answer legal issues, namely royalty payments for music and/or songs, based on a progressive legal perspective. Progressive law is used as the main study because progressive law has an orientation to "dismantle" the articles of legislation to be returned to their moral nature and purpose. Thus, progressive law can be said to be a "pro-people" law, a touchstone, and a guide for legislation. Research on copyright royalties has been conducted by Edward James Sinaga (2020) concerning the Management of Royalties for Announcements of songs and/or Musical Works (Sinaga, 2020). This study confirms that the legal awareness of the creators and the institutions that facilitate the creators of a copyrighted work is still not optimal so the understanding of royalties and copyrights is also not maximized. Further research was carried out by Mustika Putra Rokan (2021) regarding the Implementation of Government Regulation Number 56 of 2021 concerning Management of Song and/or Music Copyright Royalties Judging from the Perspective of Law Number 28 of 2014 concerning Copyright which emphasized that the legal basis for collecting and distributing royalties become stronger with the presence of the PP (Rokan, 2021). Furthermore, research on royalties was also carried out by Rizky Syahputra, Doddy Kridasasana, Zaenal Arifin (2022) on Legal Protection for Musicians of Copyright in Payment of Royalties which discussed the need for agreement documents that must be agreed upon between the creator and copyright user as a proportionalization of profits. economic gain (Syahputra, Kridasaksana, 2022).

This research is an original study based on the three previous studies because it discusses copyright royalties from a progressive legal perspective that the three previous

researchers have not discussed. This study aims to answer two problem formulations, namely: (i) How does progressive law review royalty payments in copyright? and (ii) Is the emphasis on the creator's economic rights in the payment of royalties contrary to the value of justice from a progressive legal perspective?

Research Methods

This research is juridical-normative legal research (Irwansyah, 2020). This study looks at the coherence between principles, concepts, and the rule of law. This research is oriented toward the prescription of the legal issues faced (Marzuki, 2017a). This study uses two approaches: the legislation approach and the conceptual approach. The legal materials in this study are primary legal materials which include: the 1945 Constitution of the Republic of Indonesia, Law no. 28 of 2014 concerning Copyright, and Government Regulation No. 56 of 2021 concerning Management of Song and/or Music Copyright Royalties. Secondary legal materials include books, and journal articles, for research results, and non-legal materials include language dictionaries.

Discussion

The Perspective of Progressive Law concerning Royalty Payments

Progressive law reflects disappointment with the way of law in Indonesia, especially at the end of the 20th century (Antasari, 2019). Progressive law sees that even though Indonesia was independent in 1945, the colonial way of law is still "thick" in both theoretical and practical aspects of the law. Two basic assumptions of progressive law become the ontological basis on which progressive law must be moved and implemented (Rahardjo, 2010); which include several points. *First*, the law is for humans, not the other way around. This assumption asserts that law is an instrument to serve and realize human goals. As an instrument, the law should not escape criticism and evaluation. Changing human conditions and situations make the nature of "*law for humans*" must be adapted to human development and needs. *Second*, the law is an institution that continues to "*become*"; this means that the absolute and finality of law is an illusion (law as a process, law in the making). Progressive law must always see the law as a moral construction that, in time, must be replaced, reinterpreted, and reconstructed according to the moral purpose of law formation.

Progressive law must be interpreted as a law that is not anti-change. Progressive law views that law is never eternal, but only change itself is eternal. In understanding and applying the law, progressive law is always based on moral-humanity. This includes the orientation of legal theories and concepts even though they are rarely or even "*unusual*" used as long as they have a teleological orientation to the meaning of the law, then it is mandatory and appropriate to do so. Progressive law should be viewed as a "movement" rather than a legal theory or concept. In Satjipto Rahardjo's view, Progressive law should not be interpreted and understood in a narrow and compartmentalized way. Thus, progressive law can also be understood by looking at other legal concepts and theories, which include: *First*, responsive legal theory as proposed by Nonet & Selznick. In Nonet & Selznick's view, the law must be seen and associated with the development of society. The development of society can be referred to as the "*womb*" of law. Separating the law from the development of society is the same as separating "*children from their biological mothers*". The above phenomenon includes the need to look at law more substantively, not only building regulations that are formal-procedural (Antasari, 2019). *Second*, realist legal theory or commonly known as legal realism put forward by Oliver Wendell Holmes. Legal experts often quote his expression related to law: "*The life of the law has not been logic: it has been experiencing*". Concrete experiences and cases within certain limits and corridors sometimes need to make "*logic leaps*" and "*axiom breakthroughs*" to realize legal justice (Rato, 2021). That emphasizes that the urgency of legal realism emphasizes that law must be seen from the context and not just a lifeless text. *Third*, it deals with the sociological jurisprudence theory proposed by Roscoe Pound. Pound emphasizes the implications and impacts of working the law not only for itself (law for law). However, the law must contribute to life and social reality so that it becomes a means of engineering society towards the society that has been aspired to (law as a tool of social engineering) (Lathif, 2017).

Fourth, the idea of natural law or natural law. In the view of natural law, the law has transcendental and meta-juridical aspects so that there are spiritual values that the law strives for. *Fifth*, the idea of critical legal studies, commonly called critical legal studies, was put forward by Roberto M. Unger. Unger's view is that dissatisfaction with legal performance occurs because the law is only an "*instrument of procedure*", while substantive values in law are rarely fought for. It can be concluded that Unger's understanding of law lies in Unger's view that the law has been covered by a "*procedural veil*" that ignores substantial aspects (Unger, 1986). Based on the descriptions of various legal theories or concepts above,

progressive law sees law holistically as a combination of norms and behavior (norm and behavior). Written rules or legal norms may not be the *primus inter pares* or the main one of them all. Although it must be acknowledged that the importance of written regulations must be understood as one of the important instruments in building law, that does not mean that written rules are the only ones. Written rules must be combined with various aspects of the law that has been "rarely" considered an important part of the law. Some of these aspects are determination (determination), empathy, sincerity (sincerity), education (education), commitment (responsibility), compassion (feeling of emotion), and dare (courage)(Nafis, 2020).

Progressive law also emphasizes that the quality of law is strongly influenced by an "ideology" adopted by law. Progressive law holds the view that law has and wants to realize certain ideological goals. In this case, the law is always full of values and humanitarian considerations (Barton-Crosby, 2020). Humanity considerations in this case, apart from looking at the quality of the written law, also look at the quality and morality of the legal apparatus. Progressive law with a behavior orientation emphasizes the importance of legal construction from law enforcement officers to written rules. The legal construction of law enforcement officers becomes the "life" that brings the law to life in a written rule. Progressive law views that behavior as the lifeblood of the enforcement of norms (Rosadi & Marwan, 2020). That also confirms that the essence of law is justice. Justice is like a sweet fruit from a tree called law (Wiyono, oyon M. Darusman, 2019). Justice, in this case, must always be placed as part of the law. In this case, a good law embodies justice. Without justice, the law means nothing.

Referring to the understanding of progressive law, the emphasis on the progressive legal aspect is on legal provisions that are holistic and proportional to safeguard the rights and obligations of the community. If referring to the Copyright Law and Royalty Regulations, of course, in the progressive legal aspect, this is an important and necessary thing, but what needs to be considered is the philosophical foundation of the Copyright Law which needs to have a place in understanding every provision of the Copyright Law. The philosophical foundation in law is the deepest in accordance with the legal ideals of Pancasila. In the legal ideals of Pancasila, legal justice cannot be understood partially and independently. Justice in the ideals of Pancasila law must be seen together between legal justice, social justice, and moral and spiritual justice. In the context of the Copyright Law, an affirmation of the legal principles in the Copyright Law should exist and serve as a guide for

the sustainability of the regulation in copyright. The problem is when the Copyright Law does not include certain principles related to intellectual property, especially copyright. There should be principles in the Copyright Law that are both guiding and testing the provisions of the Copyright Law and the regulations under it. These principles are expected to become legal instruments to balance legal justice, social justice, and also moral and spiritual justice. The Copyright Law, in its philosophical foundation, emphasizes efforts to promote public welfare in copyright law policies. That mandates that copyright should not perpetuate the rights of the creator alone without understanding the construction of public morality. That can be understood in Article 3 of the Royalty Law, which stipulates that the café is one of the places that is obliged to pay royalties for music and/or songs. The inaccuracy of the arrangement in providing a definition or categorization of cafes has the potential to make all types of cafes, including small coffee shops, obliged to pay royalties.

In the context of progressive law, this emphasizes that PP Royalty does not reflect the humanitarian aspect of small coffee shop entrepreneurs but only prioritizes commercial rights for the song and/or music composers. The essence of the Copyright Law and the Royalty Regulations should look at copyright within legal justice, social justice, and moral and spiritual justice. This includes the orientation of "*promoting public welfare*" in understanding the Copyright Law and the Royalty Regulations. This is not appropriate in giving the meaning of "*escape*" to the provisions regarding the café. That is the importance of progressive law in understanding the context, so it is necessary to understand the context of the café provisions. From the explanation above, it can be concluded that the progressive legal aspect of royalty payments must place royalties not only as a right but also as an effort to promote public welfare. In this case, royalties should be emphasized for cafes with certain characteristics that should not be imposed on small coffee shop entrepreneurs.

The Payment of Royalties: Economic Rights versus Justice

Legal perspective views royalties as a form of appreciation for ownership. In this case, ownership is interpreted as ownership of tangible objects and includes ownership of intangible objects such as intellectual property. Intellectual property is a "wealth" (something of economic value) of work and the creation of human intellectuality. This intellectual meaning is intended as the result of works in the field of studies of science and art, as well as the results of human cultural creativity. Thus, intellectual property is a human masterpiece, so

it is natural to get appreciation and appreciation that is economical. The economic aspect of intellectual property cannot be interpreted as the "only" aspect. In intellectual property, there are also non-economic aspects that are considered, in this case, the moral aspect of intellectual property. One of the moral aspects of intellectual property can be seen in the existence of moral rights in copyright. Copyright as part of intellectual property places moral rights as the main right that must be given to the creator. Moral rights are not directly related to the economic aspect but are more related to the ethical aspect that, as the creator of a work, it is proper to get an award and name for his work.

The above emphasizes that in copyright, moral rights are inherent in the work's creator. Copyright, in addition to emphasizing aspects of moral rights, also emphasizes aspects of economic rights. If moral rights are ethical and have an ethical dimension, then economic rights have a practical dimension, which means that they are related to the direct economic benefits of the work. That emphasizes that creation or work is attached to economic rights as a form of fulfillment of the work resulting from intellectual performance. Economic rights, in this case, are different from moral rights. If moral rights are ethical and cannot be transferred, then economic rights with a practical dimension can be transferred to other parties, of course with certain agreements. That is because economic rights have a practical dimension, so they cannot have a static character like moral rights. Copyright with the character of guaranteeing moral rights and economic rights then gives birth to royalties as one aspect of the fulfillment of economic rights. Royalty is understood as a bill of rights (right to pay for something) for a work based on a certain agreement (commonly referred to as a license agreement) as a form of reward for the use of a work that is beneficial to another people and/or parties (Biser, 2020).

Royalties are claims and intangible assets that have economic value. Royalties as part of the fulfillment of economic rights are an appreciation of copyrighted works and a form of fulfilling economic rights as creators of a work (Asher, 2020). One of the royalties in its management is carried out by the Collective Management Institute (LMK). LMK has a function in terms of efforts to distribute and distribute royalties to the creator of a work. Provisions regarding the function of LMK are regulated in the Copyright Law as a form of legal protection for creators. A creator who has sacrificed his time, age and intellectual creativity is required to guarantee legal protection to obtain economic benefits for his work. In this case, LMK was formed to realize this goal (Alen, 2022). LMK is expected to be present as an "embodiment" of the state's role in facilitating royalty rights for creators of

works. The state's role must be understood actively so that LMKN is not passive and only waits, records, and distributes. LMKN must also be active in socialization and other efforts to increase legal awareness regarding economic rights to intellectual property, including this aspect of royalties. Even so, in Copyright Law, there are two problems related to the distribution of royalties.

There are two problems with the above. *First*, related to the category of song users who are obliged to pay royalties. Article 1, number 24 of the 2014 Copyright Law uses the word commercial without the word song. In the Copyright Law, there is an aspect of "commercial use" to pay royalties. This commercial use has a broad meaning and requires legal interpretation. That is because it needs what restrictions are included in commercial use activities. That is, for example, whether certain songs or music in lectures or learning also include commercial use. That certainly requires improvements to the Copyright Law in the future. It can be understood that the birth of PP royalty, in fact, apart from being oriented to regulate aspects of the Copyright Law further, also fills the void and legal ambiguity in the Job Creation Law. As referred to in Article 3, the PP on royalties has actually detailed the parties, matters, and activities that may be subject to royalties. That is good for providing guarantees of certainty and legal protection for the work's creator. *Second*, Article 87 paragraph (1) of the Copyright Law provides that royalties are based on reasonable compensation. The "reasonable" provision here also has the potential to cause different interpretations. That is because nature is not limitative but progressive according to the demands of the circumstances, times, and existing developments. Although the "fair" provisions are appropriate, it is also necessary to look at the limits and standards in determining the "fair" aspect of royalties.

Limits and standards in determining the "fair" aspect are needed to find legal standards and limits on a royalty which will later be implemented through policies or regulations. The ambiguity of the meaning of "fair" in royalties must be understood as an effort by lawmakers so as not to appear pragmatic and even tend to be discriminatory. Fair meaning is better regulated in the regulations below and subject to policies made by the government. Even so, allowing "reasonable" provisions following the policy flow is inappropriate because by doing so, it has reduced the meaning of "fair," which in the legal aspect contains an aspect of propriety; in fact, it is reduced to only "as the policy maker likes". This certainly has a negative tendency and even tends to cause discrimination if a legal solution is not immediately sought for this problem. Even so, it must be admitted that the

orientation to regulate royalties in the Copyright Law and 'PP royalty' is a good step to be appreciated.

Referring to the description above, royalty is a right that should be accepted by the creator so that the regulation regarding this matter must be given by law. Even though it is relevant and appropriate as an economic right, from the aspect of justice, especially when viewed from the perspective of progressive law, the ambiguity of the meaning of a café as a part that has to pay royalties finds its injustice. The idea of justice in progressive law emphasizes that law is not only a text but also a context. Progressive law positions certainty, justice and expediency in one line. Laws that are too rigid will tend to create injustice. Progressive law is not only obedient to bureaucratic procedural formalities but also material-substantive. However, what is no less important is the character of progressive law that holds fast to conscience and rejects material enslaved people. Progressive law is a law with the spirit of doing the best for the community, nation and state. Progressive law requires honest people; daring to leave the order is one way to find and liberate because, for Satjipto Rahardjo, progressive law is science always anxious to seek and liberate. (Setiaji & Ibrahim, 2018). Anxiety as a "main aspect" in progressive law in the context of Copyright Law must be seen in that the Copyright Law is based on a philosophy to promote the general welfare. The next problem is that there are no special principles in Copyright Law. The Copyright Law seems to allow the article to be swayed by an unclear understanding of the nature of copyright. The Copyright Law only guarantees philosophy but does not guide legal principles. Guidance on legal principles is important so that legal principles can guide and become a touchstone in the provisions of the Copyright Law and PP royalty.

The problem in PP royalty is due to neglect of legal principles in law so that progressive ideals in the law are reduced conservatively (Rifai, 2020). The Copyright Law conservatively only contains general provisions related to copyright but has not been able to emphasize the principles which are manifestations of the general welfare. In the Preamble to the 1945 Constitution of the Republic of Indonesia, one of the state's goals is to promote the general welfare; this is the basis of the provisions on copyright. The use of public welfare as a basis in the Copyright Law mandates that copyright provisions must be seen as part of the nation's legal ideals, namely Pancasila. The above phenomenon indicates that copyright should not be separated from the aspect of "progressivism" in the legal ideals of Pancasila. In general, copyright is understood as part of the influence of the philosophy of individualism which views the individual as the "center" of social life. Individuals, in this case, must be

fulfilled and guaranteed their rights because they are the most important part of society. In the context of copyright, if western thought and liberalism are accepted, then copyright is only oriented to the benefit of the individual creator. That can be missed in reading the growing conditions of social reality related to copyright. If you read the PP royalty and the Copyright Law provisions, the liberal aspect of copyright is still strong and is considered the most important right in intellectual property. That must be understood comprehensively because, with progressive law, copyright can be understood and read not only as a "protector of the individual" in creating works but also as protecting the public as connoisseurs of the work. Based on the perspective of progressive law, the understanding of PP royalty and the Copyright Law should be read to advance the general welfare. The general welfare cannot be interpreted as the welfare of the work's creator but includes the work's connoisseur. The "shallow" understanding and the vague meaning of *café* are the things that make PP royalty and the Copyright Law liberal and potentially oppressive.

It is oppressive in this case, especially for small coffee traders identified with the word *café*. The purpose of the PP royalty and the Copyright Law is that copyright is not an individual tool to extort other people but collectively benefit from the work in copyright. Based on this view, progressive law in the context of PP royalty must be willing to improve and even be open for evaluation. The potential for "injustice" when the meaning of *café* is not specified with certain criteria creates an antinomy. Antinomy is when legal justice is not coherent with social justice and moral and spiritual justice. Is it logical to ask for royalties for songs and/or music from a small coffee shop manager who is only oriented to support daily needs? In this case, the orientation of the state of Pancasila law must be emphasized in the Copyright Law and PP royalty provisions. PP royalty, along with the Copyright Law in the context of progressive law, is understood to only "carry" the spirit of liberalism and is far from the legal ideals of Pancasila. That is can be seen from the absence of specific principles related to copyright in the Copyright Law. The implication can be seen, one of which is related to the PP royalty arrangement, which only gives a vague meaning to the *café*. Liberalism is not compatible with the treasury of the Indonesian nation's thinking. Even if you need a copyright, a copyright that is in accordance with Pancasila is needed. It is not copyright that serves personal interests and oppresses the weak. The PP royalty provisions must be recognized as "legitimacy" for the oppression of these vulnerable groups.

Referring to the concept of justice in progressive law, it is appropriate to pay royalties on songs and music, one of which requires an assessment of the subject who must pay. The

provision regarding the café as a subject that pays royalties creates legal confusion, is it a café with a large turnover, or is it also a small coffee shop? This legal ambiguity in its implementation can lead to injustice. In this case, Article 3 PP royalty only emphasizes the aspect of economic rights but fails to read the orientation of "justice", especially from the perspective of progressive law. Based on the description above, the emphasis on the creator's economic rights in paying royalties is contrary to the value of justice from a progressive legal perspective. Thus, the President should revise the PP royalty by providing a firm, clear, and limited statement on the word café so that only cafes with large turnover pay royalties and, in this case, do not include small coffee shops with low incomes.

Conclusion

The progressive legal aspect of royalty payments must place royalties not only as a right but also as an effort to promote the general welfare. In this case, royalties should be emphasized for cafes with certain characteristics that should not be imposed on small coffee shop entrepreneurs. The emphasis on the creator's economic rights in paying royalties is contrary to the value of justice from a progressive legal perspective. Thus, the President should revise the PP royalty by providing a firm, clear, and limiting statement on the word café so that only cafes with large turnover pay royalties and, in this case, do not include small coffee shops with low incomes.

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